

S T A T E R E P O R T E R
O F
E D U C A T I O N L A W
VOLUME 8

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION OF THE STATE OF MONTANA:

LADENE MANGOLD,

Appellant,

v.

No. OSPI 142-87

Decided: Mar. 31, 1989

TRUSTEES, CHOUTEAU COUNTY
ELEMENTARY SCHOOL DISTRICTS NO.
11, HIGH SCHOOL DISTRICT NO. 2,
(BIG SANDY),

Respondent.

Order Granting Motion to Dismiss by Nancy Keenan, State Superintendent

Appeal from the Chouteau County Superintendent of Schools.

JURISDICTION, Finding lack of jurisdiction for untimely appeal.

Mangold, Appellant, v.
Chouteau County Elem. Sch. Dist. No. 11, Respondent
46 St.Rep. 36

This matter is before the State Superintendent of Public Instruction on Appeal of the August 10, 1987, Findings of Fact, Conclusion of Law and Order of the Chouteau County Superintendent of Schools. This Appeal was filed with the State Superintendent of Public Instruction on October 5, 1987, 54 days after the County Superintendent's Order.

ARM 10.6.122 states:

"(1) An appeal shall be taken by filing a notice of appeal with the state superintendent of public instruction and a copy of such notice of appeal with the county superintendent. Failure of any party to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal but is grounds for such action as the state superintendent deems appropriate, which may include dismissal."

ARM 10.6.127(1) states:

"Appellant shall appeal from the order of the county superintendent of schools to the state superintendent of public instruction within 30-days after the rendering of such order unless the time is shortened or extended by an order entered by the state superintendent upon good cause showing. If a party petitions for a re-hearing before they appeal the final decision to the state superintendent, then the 30-day statute of limitations shall be tolled until a final decision has been rendered by the county superintendent."

Respondent School Districts filed a motion to dismiss this appeal with the State Superintendent of Public Instruction on October 27, 1987. Respondents simultaneously filed their brief in support of the motion. Appellant filed her brief in opposition to the motion to dismiss on November 6, 1987.

The above cited Administrative Rules of Montana (ARM) were adopted by the Superintendent of Public Instruction under authority granted in Section 20-3-107, MCA, and govern the procedures of this appeal.

ARM 10.6.122 makes the time period allowed for appeal a jurisdictional matter. Under this rule, failure to file the appeal within the 30-day period allowed by ARM 10.6.127 deprives the State Superintendent of Public Instruction of jurisdiction to hear the appeal. ARM 10.6.127 gives the State Superintendent discretion to issue an order increasing or decreasing the 30-day period during which an appeal may be filed with the State Superintendent. In this case, the State Superintendent did not issue an order increasing the 30-day period for the filing of an appeal.

This appeal was filed within the 30-day period required under ARM 10.6.122 and 10.6.127.

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ORDER

This State Superintendent of Public Instruction hereby grants Respondents' Motion to Dismiss for lack of jurisdiction.

DATED this 31st day of March, 1989.

s/Nancy Keenan
State Superintendent